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Human Rights Committee

Communication No. 2130/2012

Decision adopted by the Committee at its 115th session (19 October-6 November 2015)

Submitted by:	Zine El Abidine Ben Ali (represented by Akram Azoury)
Alleged victim:	The author
State party:	Tunisia
Date of communication:	19 January 2012 (initial submission)
Document references:	Special Rapporteur's decision under rules 92 and 97, transmitted to the State party on 1 February 2012 (not issued in document form)
Date of decision:	2 November 2015
Subject matter:	Unfair trial in absentia
Procedural issues:	Inadmissibility *ratione temporis*; incompatibility; non-exhaustion of domestic remedies
Substantive issues:	Right to a fair trial; presumption of innocence; right to an independent and impartial tribunal; right to defend oneself in person or through legal assistance of one's own choosing; right to be informed promptly and in detail of the nature and cause of the charge against one; right to have adequate time and facilities for the preparation of one's defence
Articles of the Covenant:	14, paragraphs 1, 2 and 3 (a), (b) and (d)
Articles of the Optional Protocol:	1, 3 and 5, paragraph 2 (b)

[Annex]

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Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)

concerning

Communication No. 2130/2012*

Submitted by:	Zine El Abidine Ben Ali (represented by Akram Azoury)
Alleged victim:	The author
State party:	Tunisia
Date of communication:	19 January 2012 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 2 November 2015,

Having concluded its consideration of communication No. 2130/2012 submitted by Zine El Abidine Ben Ali under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 19 January 2012, is Zine El Abidine Ben Ali, former President of Tunisia. His communication reports violations by Tunisia of article 14, paragraphs 1, 2 and 3 (a), (b) and (d), of the Covenant. He is represented by Mr. Azoury. Tunisia ratified the Covenant on 18 March 1969 and acceded to the Optional Protocol on 29 June 2011. Pursuant to article 8, paragraph 2, of the Optional Protocol, the Optional Protocol entered into force on 29 September 2011.

The facts as submitted by the author

2.1 The author was the President of Tunisia and held office until 14 January 2011, on which date he left the country. Since his departure, the official authorities and the official media in Tunisia have stated that the author is guilty of various criminal offences, including: (1) illicit enrichment and the possession of assets in various countries, including Switzerland; (2) arms trafficking; and (3) drug trafficking.

* The following members of the Committee participated in the consideration of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Sarah Cleveland, Mr. Ahmed Amin Fathalla, Mr. Olivier de Frouville, Mr. Yuji Iwasawa, Ms. Ivana Jelić, Mr. Duncan Laki Muhumuza, Ms. Photini Pazartzis, Mr. Mauro Politi, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Mr. Dheerujlall Seetulsingh, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

2.2 On 21 February 2011, 35 days after the author left the country, Tunisian television aired a report filmed in the presidential residence at Sidi Bousaid showing cash supposedly plundered by the author and his family and deposited in the safe there. The report showed banknotes and jewellery. On 4 March 2011, the Prime Minister, Béji Caid Essebsi, stated during his first public appearance that the author was "guilty of high treason for having stopped fulfilling his responsibility to ensure security and stability and for having left the country while he was Commander-in-Chief of the armed forces" and pointed out that the offence was punishable by the death penalty. On 14 March 2011, the acting President, Fouad Al Mbazaa, issued Decree No. 13, which was published in the Official Gazette No. 18 of 18 March 2011, on the confiscation of movable and immovable assets acquired by the author after 7 November 1987 and which belonged to the author and another 112 family members whose names were included on the list annexed to the Decree.[1] The Decree entered into force one day before the entry into force of Decree No. 14 permitting the acting President of the time to enjoy legislative prerogatives. On 7 June 2011, Kadhem Zine El Abidine, representing the Ministry of Justice, publicly stated that, under Tunisian law, the author did not have the right to be defended in Tunisian proceedings by counsel of his choice if he was not personally present in the court.

2.3 On 20 June 2011, the media broadcast information concerning what was said to be a judgement handed down by the Tunis Tribunal de Grande Instance (court of major jurisdiction) the very day that the trial began, sentencing the author to 35 years' imprisonment on the basis of the pictures of foreign currency that had been published. On 4 July 2011, the media also broadcast information concerning what was said to be a judgement handed down by the Tunis Tribunal de Grande Instance the very day that the trial began in the "Carthage Palace" case, based on the supposed discovery in the presidential residence, after the author's departure, of two kilograms of cannabis resin, weapons and archaeological artefacts. The judgement sentenced the author to 15 years and 6 months' imprisonment on the basis of an alleged suitcase containing cannabis resin that was opened during the trial by the head of the drugs squad, together with a bubble wrap envelope on which was written "drugs" in what the judge stated was the author's hand. On 28 July 2011, the media broadcast information on an alleged judgement handed down by the Tunis Tribunal de Grande Instance, sentencing the author in his absence to 16 years' imprisonment for fraud and corruption in cases of purchase and sale of land for property development in the early 2000s.

The complaint

3.1 The author claims to be the victim of a violation of article 14, paragraph 2, of the Covenant, in that, since 14 January 2011, the political authorities and the media have repeatedly stated that he was guilty of all the charges brought against him. On 21 February 2011, the official Tunisian television channel broadcast filmed images with an official statement that the money and jewellery shown were the proceeds of offences of which the author was guilty. These statements and images were disseminated by the media. The author alleges that the confidentiality of the investigation was violated, since the images were in principle part of the record of the criminal investigation, but the media had been alerted to their existence and the safes had been opened in front of the media. In addition, the statement made by the Tunisian Prime Minister on 4 March 2011 accusing the author of high treason and then the judgements issued resulted from a political decision that the author was guilty and thus violated the presumption of innocence.

[1] The State party mentions in its observations that Decree No. 13 was promulgated on 14 March, not on 18 March, 2011 (see para. 4.15 below).

3.2 The author considers that he is the victim of a violation of article 14, paragraph 1, of the Covenant, which requires that the tribunal be competent, independent and impartial. He cites the Committee's jurisprudence, according to which "a situation where the functions and competences of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent and impartial tribunal within the meaning of article 14, paragraph 1".[2] The various official authorities have stated that the author is guilty of all the offences with which he has been charged and in fact instructed the judiciary to ratify their decision of guilt. Furthermore, the Tunisian Ministry of Justice instructed the judiciary not to agree to the author being defended by a lawyer of his choice in his absence (see para. 2.2 above). The author also considers that Decree No. 13, published in the Official Journal of 18 March 2011, violates the principle of the separation of the executive and the judicial powers in that it orders the imposition of criminal sanctions such as the confiscation of all the moveable and immovable property of the author, including his personal home, while the power to impose criminal sanctions is the exclusive right of the judiciary following a judgement that respects the standards of a fair trial and the rights of the defence.

3.3 The author also claims to be the victim of a violation of article 14, paragraph 3 (d), of the Covenant, which recognizes the right to defend oneself in person or through legal assistance of one's own choosing. The author refers to the statement of 7 June 2011 made by the representative of the Ministry of Justice (see para. 2.2 above). Furthermore, he could not be represented by the lawyer of his choice during the hearings of 20 June 2011 and 4 July 2011.

3.4 The author alleges that the right of any accused person to be defended by counsel of his or her choice implies the right to be defended even in one's absence. The representative of the Ministry of Justice stated that article 141 of the Code of Criminal Procedure provides that accused persons who do not appear before the court may not enjoy a defence and no lawyer may represent them. He thus apparently overlooked article 32 of the Tunisian Constitution, which provides that, in the event of contradiction between a national law and an international convention, it is the text of the international convention that prevails; he thus explicitly violated the guarantees of a fair trial that were applicable in this case.

3.5 Article 14, paragraphs 3 (a) and (b), of the Covenant provides that every accused person has the right to be informed promptly and in detail of the nature and cause of the charge brought against him or her and to have adequate time and facilities for the preparation of his or her defence. This principle is expressed through the right of the accused person to have direct access to his or her criminal record, as well as to be heard and to make observations and be informed of observations and documents produced, with full equality of arms. The author was not notified of the proceedings conducted against him, nor was he informed of the charges being brought, and he did not enjoy the right to be heard in respect of his claims. Furthermore, he was not notified of the date of the hearings or the alleged judgements of 20 June 2011, 4 July 2011 and 28 July 2011, which were each handed down on the very day of the hearing concerned, depriving him of the time and facilities needed to prepare his defence, in violation of article 14 of the Covenant.

3.6 The author further alleges that he should have had a reasonable period of time to prepare his defence. An unreasonable period of time is either an inordinate delay or a very short period of time that prevents the accused from being in a position to present his defence. The judge must take the necessary time to judge the case, without

[2] Communication No. 468/1991, *Bahamonde v. Equatorial Guinea*, Views adopted on 20 October 1993, para. 9.4.

precipitation or hasty decisions. The author points out that the speed with which the three judgements were issued was quite unreasonable in that they were each pronounced on the day on which the case concerned was begun and after only the prosecutor, and not the defence, had been heard.[3]

3.7 The neutrality and impartiality of members of the judiciary are laid down in article 14, paragraph 1, of the Covenant and article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Lack of impartiality would be objectively apparent if the judge were to speak in a way that suggested that he or she was already convinced of the guilt of the person concerned. The members of the judiciary who pronounced the judgements of 20 June 2011, 4 July 2011 and 28 July 2011 had been previously influenced by statements of the author's guilt made unremittingly by official authorities, the media and public opinion and by the shouting and the crowd in the courtroom. The procedure followed in violation of the right of defence was decided on by the executive authorities. The lack of impartiality is objectively apparent from the fact that the judgements were pronounced on the day that the trials opened, without the person concerned being heard, in violation of all guarantees of a fair trial. The judgements of 20 June 2011, 4 July 2011 and 28 July 2011 had no justification whatsoever. They were pronounced on the basis of, respectively: only images of alleged foreign currency that had previously been shown on television with the presumption that it had been plundered by the author and his family and deposited in the safe; only what was said to be two kilos of cannabis resin on which the author had allegedly, according to the judge, written the word "drugs" in his own hand, weapons and archaeological artefacts displayed during the hearing by the head of the drug squad; and the alleged fraudulent purchase and sale of land for property development. This was done without any explanation being given as to how the foreign currency "found" 40 days after the author's departure or the drugs could be linked to him, without the alleged currency being examined by the court and kept sealed as exhibits — instead it was returned to the Central Bank where it was no longer separately identifiable — and without the court producing any proof of the irregular nature of the purchases and sales of land. The judgements are explicitly and exclusively based on rumours, presumptions and witness statements.

3.8 The fact that the political authorities deprived the author of the right to be represented by a lawyer of his choice when he was not present in the court in fact deprives him of both the right of defence and of the right to appeal against any decision taken against him. The decision deprives him de facto of his right of access to a court. The requirement that local remedies be exhausted is thus met since the author is denied by a political decision endorsed by the judiciary of the right to access his case file.

State party's observations on admissibility and the merits

4.1 On 3 August 2012, the State party submitted its observations on the admissibility and the merits of the communication. The State party contests the admissibility of the communication *ratione temporis*, for non-exhaustion of domestic remedies and on the grounds that it would be incompatible with the Covenant in respect of article 3 of the Optional Protocol. It also disputes the merits of the communication.

4.2 The State party firstly recalls the facts of the case and states that, pursuant to judgement No. 23004 of 20 June 2011, of the Criminal Chamber of the Tunis Court of First Instance, the author was sentenced in absentia to 35 years' imprisonment for embezzlement, misappropriation of public funds by a guardian of the public interest and misuse of funds on the basis of articles 95, 96, 97 and 99 of the Tunisian Criminal

[3] Although the author does not mention it specifically, it seems that his claims here fall under article 14, paragraph 3 (c), of the Covenant.

Code. The author is accused of having taken advantage of his position as President to embezzle public funds and misappropriate the sum of 41,225,925 Tunisian dinars. In February 2011, after a search of the Sidi Dhrif Palace, the author's residence, conducted within the context of their prerogatives and statutory powers, the members of the National Commission of Investigation into Corruption and Embezzlement discovered some well-hidden safes full of banknotes, piles of gold, jewellery and other precious stones and many different credit cards issued by foreign banks. The Commission therefore referred the case to the prosecutor's office, an investigation was begun and the above-mentioned judgement was issued.

4.3 Under judgement No. 23005 of 4 July 2011 handed down by the Criminal Chamber of the Tunis Court of First Instance, the author was sentenced in absentia to 15 years and 6 months' imprisonment for (1) violating the Drugs Act through the illegal allocation, use and equipping of premises for the storage and concealment of drugs, (2) violating the Act on the introduction, trade, possession and bearing of weapons by introducing and importing category 1 weapons and munitions and (3) violating the Archaeological, Historical and Traditional Arts Heritage Code.[4] The author is accused of having used the antechamber of his personal office in the palace in Carthage to store and conceal drugs, having introduced and imported category 1 weapons and munitions without legal authorization and not having informed the relevant departments that he was in possession of movable archaeological artefacts.

4.4 In respect of judgement No. 23175 of 28 July 2011, the State party notes an error or lack of precision on the part of the author since, on the date on which the State party's observations were made, two criminal convictions had been issued against him — No. 23174/11 and No. 23175/11 — both concerning the abuse and use by the author of his position as President of the Republic to provide a third party, in this case members of his family, with unjustified advantages causing harm to the administration and in contravention of the regulations in force. However, neither of these convictions concerned a sentence equivalent to 16 years' imprisonment.

4.5 On admissibility, the State party notes that, under article 9 of the Optional Protocol, that instrument only enters into force three months after the date of the deposit of the instruments of accession with the Secretary-General of the United Nations. The instruments of accession of Tunisia to the Optional Protocol were deposited in June 2011. The Optional Protocol therefore entered into force for Tunisia in September 2011. However the contested convictions were issued in June and July 2011 respectively. The communication is therefore inadmissible on that basis.

4.6 The State party furthermore considers that the author has not exhausted domestic remedies. Indeed, the principle of the right to appeal to a higher court applies under Tunisian law. These legal remedies are open to the litigant and include an application for a rehearing under articles 175 to 183 of the Code of Criminal Procedure and an appeal under articles 207 to 220 of the Code of Criminal Procedure. There are also extraordinary remedies such as an appeal on points of law. However, the author did not make use of any of those remedies to challenge the sentences handed down against him. In this regard, the State party notes that the author admits that he had not exhausted these remedies on the grounds that he was "denied by the Tunisian political authorities" of his right to be represented by a lawyer of his choice and in his absence. However, an application for rehearing may be raised against a sentence handed down in absentia.[5] This may be done by either the applicant in person or by his or her representative to the registry of the Court that issued the decision within time limits

[4] Act No. 52, art. 7, of 18 May 1992, Act No. 33, arts. 2 and 17, of 12 June 1969 and the Archaeological, Historical and Traditional Arts Heritage Code, articles 68, 81, 82 and 93.

[5] Applications for rehearing and judgement in absentia are regulated by articles 175 to 183 of the Code of Criminal Procedure.

that vary depending on how the judgement is served. If the person served resides outside the territory, he or she may lodge an application for a rehearing within a period of 30 days. If the service was not made to the person concerned or if the enforcement documents do not show that the accused was aware of them, an application for rehearing is admissible until the expiry of the limitation period after which the sentence may no longer be enforced. The limitation period for criminal penalties is 20 years. The author still has the possibility of applying for a rehearing but he has so far not seen fit to use it, preferring to flee from justice and forego appearing before the competent courts.

4.7 The State party adds that the submission of an application for rehearing means that a date must be set for the hearing as soon as possible. If the author had appeared before the competent court, he could have been tried again, since the convictions in absentia would have been set aside on either criminal or civil points for decision, as an application for rehearing is a revocatory remedy. The author could therefore have been retried and would have had the opportunity to defend himself with the assistance of counsel of his choice, in accordance with the law in force.

4.8 As stated above, the author could also have appealed against the judgements handed down before the Criminal Chamber of the Court of Appeal and, if appropriate, the Court of Cassation. The author is currently fleeing from justice and still refuses to appear before the judicial authorities although he is the subject of international arrest warrants issued by the Tunisian legal authorities and relayed by INTERPOL.

4.9 Contrary to the author's claims, he could have been represented by counsel of his choice. However, since he fled the territory without leaving an address, the summonses and other documents that would have allowed him to appoint counsel of his choice to represent him were forwarded to the police station in his home constituency.[6] As he did not appoint one or more counsel, the author had counsel appointed for him, pursuant to article 141 of the Code of Criminal Procedure. The court-appointed lawyers were able to register their presence at the court but were unable to defend the author's case since article 141, paragraph 1, provides that a person accused of a crime or an offence punishable by imprisonment must appear personally at the hearing to allow counsel to defend his or her case. Paragraph 175 provides that, when a defendant who fails to enter an appearance has been duly summoned, he or she shall be tried in absentia.

4.10 The State party notes that domestic law does not authorize a person of Tunisian nationality to be represented by a foreign lawyer before the Tunisian courts. Moreover, some bilateral conventions on cooperation and mutual legal assistance signed by the State party do not provide for this possibility. This is the case, for instance, of the bilateral convention between the State party and Lebanon, of which Mr. Azoury, counsel for the author, is a national. The State party notes furthermore that the signature at the end of the communication to the Committee does not match the signature of Mr. Azoury to be found at the bottom of the letter addressed to the President of the Bar of Tunis of 1 July 2011, which makes the communication before the Committee anonymous and thus contrary to article 3 of the Optional Protocol.

4.11 As regards the procedure before the Committee, the State party notes that the power of attorney presented in support of the communication and giving power to Mr. Azoury to represent the author expired on 31 December 2011. The counsel has therefore no standing to act on behalf of the author.

4.12 On the merits, the State party notes that the author has contested, firstly, the rules of law on which the State party based its case to try him and, secondly, the way in which the trial was conducted. In respect of the first ground, the State party notes that

[6] Code of Criminal Procedure, art. 139.

the rules of law on the basis of which the author was tried came into force while the author was the head of the executive. Moreover, the author repeatedly stated to United Nations bodies, including the Committee, that those rules were consistent with the international instruments ratified by Tunisia.

4.13 In respect of the second ground, while the author considers that he has not benefited from the principle of the presumption of innocence under article 14, paragraph 2, of the Covenant, the State party notes that no document or testimony submitted by the public prosecutor or the investigating judge and which has been maintained by the court as evidence of the offences attributed to the author refers to any political decision on his guilt. The judgements against the author were issued by a competent court in full independence and impartiality in accordance with the law in force. The State party is not responsible for the media content of the various organs of press and communication. It recalls that freedom of the press is guaranteed. The public nature of the first television channel does not indicate that there is any control over its media content. Furthermore, the seizure of the author's home was carried out by the National Commission of Investigation into Corruption and Embezzlement, which is an independent body.

4.14 In any case, the broadcasting of images of the event is not a violation of the confidentiality of the investigation, since the seizure was carried out by the Commission before the judicial investigation against the author was instigated. In addition, the confidentiality of the investigation shall not preclude the right to information. The images transmitted only informed the public of the state of the author's residence, without making any judgement in respect of his guilt.

4.15 Contrary to the author's claims, the judicial authorities have been functioning completely independently since 14 January 2011. Several court decisions demonstrate this independence, either clearing some members of the author's family or his sons-in-law or applying mitigating circumstances.[7] The State party rejects the author's argument that the Minister of Justice instructed the judiciary not to agree to the author being defended by counsel of his choice. The problem is legal rather than political (see paras. 4.9 above and 4.16 below). Under Decree-Law No. 13 of 14 March 2011 on the confiscation of movable and immovable property of the author and his family members and other persons, confiscation is both a penalty and a security measure. It is a security measure in that it aims to guarantee the safety and the physical and moral integrity of the persons concerned and the domestic security of the State. Indeed, the Tunisian people have called for the restitution of the assets held by the persons concerned by the confiscation. The Constitution of 1 June 1959 in force at the time of the promulgation of the Decree-Law provides that the right of ownership shall be exercised in accordance with the law. The law may, in exceptional circumstances, restrict the exercise of this right to ensure a major interest of society, which in this case was the safety of persons and property and the security of the State.

4.16 In respect of the allegation concerning article 14, paragraph 3 (d), that the author was not able to be assisted by counsel of his choice, the State party reiterates the arguments laid out in respect of admissibility (see para. 4.9 above). It adds that a trial in the absence of the accused may in some circumstances be permissible in the interest of the proper administration of justice, for example when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present. Consequently, such trials are only compatible with article 14, paragraph 3 (d), if the necessary steps are taken to summon accused persons in a timely manner and to inform them beforehand of the date and place of their trial and to request their attendance.[8] However, the author implicitly acknowledges that he had been informed

[7] The State party cites a number of judgements in support of its argument.

[8] Communication No. 16/1977, *Mbenge v. Zaire*, para. 14.1, and communication No. 699/1996,

of the date and place of the trial, as shown by several articles mentioning the trials that the author attached to his communication to the Committee.

4.17 All the summonses and services of judgements were communicated to the author according to the laws in force (see para. 4.9 above).

4.18 In respect of the timing according to which the judgements were issued, the State party responds that the author did have court-appointed counsel who, pursuant to the Code of Criminal Procedure, submitted comments on the form and produced written reports; that the counsel were not able to present his case orally since the author had absconded; and that is the reason why the judgements were pronounced on the same day, particularly since, in criminal cases, the court pronounces judgement after having deliberated in accordance with article 164 of the Code of Criminal Procedure, once the debate is closed, and may not postpone the judgement to a later hearing, as it can do in criminal cases. The impartiality of the judges cannot be questioned as the author has also benefited from an acquittal on some charges.[9]

4.19 On the other objections, the State party notes that the author asks the Committee to assess the evidence shown by the Court even though all the judgements were handed down against the author in fact and in law. The State party recalls that it is not for the Committee to make an assessment of the application of the law by the courts, unless its assessment refers to a violation of the State party's obligations under the Covenant, which is not the case because it is not apparent from the judgements in this case that the law was interpreted and applied arbitrarily or that its application constituted a denial of justice.[10] The State party adds that the Committee is not a final instance of appeal.

Author's comments on admissibility and the merits

5.1 On 28 December 2012, the author replied, firstly, that he had renewed the power of attorney in favour of his counsel and thus confirmed the legality of his representation.[11]

5.2 In respect of the allegation that the signature at the end of the communication to the Committee did not match the signature of the counsel, Mr. Azoury, affixed at the bottom of the letter addressed to the President of the Tunis Bar Association, the author responds that the signature was that of an associate lawyer who had power of attorney for Mr. Azoury and signed by proxy in his place. The signature at the bottom of the communication before the Committee is certainly that of Mr. Azoury.

5.3 In response to the argument *ratione temporis*, the author concedes that the Optional Protocol only entered into force in September 2011. He nevertheless considers that this means that an individual cannot submit a communication to the Committee until after that date but may submit one concerning facts that occurred prior to the entry into force of the Protocol since, according to him, the Covenant was already applicable to the State party.

5.4 In respect of the exhaustion of domestic remedies, the author replies that the State party provided no proof of the notification of the procedural documents and judgements to the author. He became aware of that fact for the first time when consulting the annexes to the State party's observations. In addition, he calls on the State party to demonstrate not only that domestic remedies were available but that they were accessible.

Maleki v. Italy, para. 9.3.

[9] Judgement No. 23005 of 4 July 2011.

[10] Communication No. 583/1994, *van der Houwen v. Netherlands*.

[11] A copy of the power of attorney renewed and dated 1 January 2012 is presented in the author's comments.

5.5 The author alleges that the executive of the State party did not allow the two lawyers he had appointed to defend him or even to acquaint themselves with the documents in the case file. Furthermore, the Ministry of Justice, in an official statement, banned any lawyer, whether appointed by the author himself or ex officio, from presenting the author's defence. [12] The author considers that the Covenant provides for the right of every accused person to defend himself and to exercise remedies through counsel of his or her choice, even in absentia.

5.6 The author insists that he is not fleeing from prosecution since he had left the country well before the cases were brought. The author considers that he was victim of a conspiracy to effect a regime change. Indeed, he was prevented from returning to Tunisia despite his insistence on going back. The impossibility of returning to his country makes any domestic remedies inaccessible.

5.7 The argument put forward by the State party that the rules of law on which the judgements were based were enacted when the author was in power is not convincing. The rule of domestic law must comply with the Covenant, regardless of the identity of the person running the State at the time of its promulgation.

5.8 In respect of the presumption of innocence, although Tunisian television is not an official television station, it is the national television company and represents the views of the State, which has some influence over it. In addition, the subordination of the National Commission to the executive authorities is established by Decree-Law No. 2011-7 of 18 February 2011, which demonstrates that the Commission, despite its purely nominal description as independent, is actually a full part of the executive authorities. The author notes the Commission's public service obligations, its excessive powers, the procedure for the appointment of its members, the obligation of accountability to the executive and its financing.

5.9 The only inquiry conducted was the one carried out by the executive authorities through the Commission. The Commission's report is the only evidence on which the convictions and sentencing were based. Consequently the judgements merely endorsed political decisions. The fact that the Commission invited the Tunisian television company to film the seizure operation shows the pressure exerted by the authorities to convince public opinion of the author's supposed guilt. The author cites some official statements in support of the argument that the judiciary is not independent.

5.10 In respect of the Decree-Law of 14 March 2011, the author maintains that this is an encroachment by the executive authorities onto the powers of the judiciary and has been recognized as such by the State party itself in mentioning that it was promulgated to guarantee the internal security of the State. According to the author, this measure of expropriation is an act undertaken by the executive authorities that is not in accordance with any judicial procedure and violates the right of defence and the principle of separation of powers.

5.11 On the issue of article 14, paragraph 3 (d), the author replies that he tried in vain to obtain information from the Tunisian authorities on the charges being brought against him and in respect of the ongoing cases. He was met with a categorical refusal, which demonstrates bad faith on the part of the State party authorities, which are denying the author the right to be represented by counsel, even foreign counsel, of his choice, under the pretext that Tunisian law does not allow it. To demonstrate good faith, the authorities would have worked with the counsel chosen, at least to find out what was preventing the author attending the trial or to obtain an address at which the procedural documents could be notified to the author. The legislature may not provide

[12] On 7 June 2011, a representative of the Ministry of Justice publicly stated that, under Tunisian law, the author did not have the right to be defended in Tunisian courts by counsel of his choice if he was not personally present in the court.

for any infringement of the said rights of defence except if it concomitantly provides for the conditions in which such an infringement may be allowed. The author notes that the court-appointed lawyer did not contact him or his counsel despite the fact that this was possible. The author was therefore not able to acquaint himself with the elements of the case file concerning either the author or the counterarguments to the charges. Given that, under article 141, mentioned above, court-appointed counsel may not plead a case on the merits, no practical or effective defence was offered, which is a violation of article 14, paragraph 3 (d), of the Covenant.

5.12 The author refutes the information submitted by the State party that no bilateral agreement exists between Tunisia and Lebanon that would allow a Lebanese lawyer to defend a Tunisian citizen in Tunisia. It is sufficient that the foreign counsel be assisted by a lawyer who is a member of the local Bar.

5.13 The author considers that the period of one week to issue a judgement cannot be described as reasonable and that such a period could not allow the court-appointed lawyers to examine the evidence or to present the defence, nor even the judge to review the case.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 In reference to the application of the Optional Protocol to the present communication, the Committee recalls that Tunisia acceded to the Optional Protocol to the Covenant on 29 June 2011. Pursuant to article 9, paragraph 2, of the Optional Protocol, the Optional Protocol entered into force for Tunisia on 29 September 2011. The Committee recalls its jurisprudence and reaffirms that it may examine alleged violations of the Covenant that occurred prior to the entry into force of the Optional Protocol for the State party only if the violations continue after that date or continue to produce effects which are in themselves violations of the Covenant.[13] As the Protocol cannot be applied retroactively, the Committee does not have jurisdiction *ratione temporis* to examine the allegations concerning judgements No. 23004 of 20 June 2011, No. 23005 of 4 July 2011 or No. 23175 of 28 July 2011 against the author, nor the allegations concerning measures of expropriation following the promulgation of the Decree-Law of 14 March 2011, which are the only subject of the communication submitted to the Committee. The Committee adds that it has not been established that the said acts continued to produce effects after the entry into force of the Optional Protocol.

6.3 In light of the foregoing, the Committee will not consider the other exceptions to the admissibility of the communication.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 1 of the Optional Protocol;

[13] See inter alia communication No. 1972/2010, *Quliyev v. Azerbaijan*, Views adopted on 16 October 2014, para. 8.3; and communication No. 1070/2002, *Kouidis v. Greece*, Views adopted on 28 March 2006, para. 6.3.

(b) That the present decision shall be transmitted to the State party and to the author.